

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1459 w/CS Transportation and Sale of Cigarettes
SPONSOR(S): Altman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2676 by Haridopolis

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>34 Y, 1 N w/CS</u>	<u>Morris</u>	<u>Liepshutz</u>
2) <u>Finance and Tax</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill amends various existing definitions in Chapter 210 and creates new definitions to add specificity and conform to other changes made in this legislation with regard to the transport and sale of cigarettes.

The bill prohibits the transporting of cigarettes from Florida to another state without first affixing to the cigarettes the tax stamp required of the state into which the cigarettes are to be sold, or paying any other excise tax required by that state. It also prohibits the stamping of cigarettes for, paying taxes to, or selling cigarettes in another state if the other state prohibits either action. An exception is created to those prohibitions for a participating manufacturer or importer in compliance with the Master Settlement Agreement and for manufacturers or importers in compliance with a qualifying statute enacted pursuant to the Master Settlement Agreement. The bill also establishes a structured distribution system and provides the following additional requirements:

- requires every dealer in the state to affix the required tax stamps within ten days of receipt of the products;
- requires dealers outside the state to affix the excise tax stamp before cigarettes are shipped into the state;
- prohibits dealers, except as provided in s. 210.09(1), F.S., from holding or possessing unstamped cigarettes received from a manufacturer or importer;
- requires unstamped cigarette packages to be stocked separately from stamped packages;
- prohibits dealers from transferring unstamped cigarette packages to another facility of the dealer within this state or to another person in this state;
- limits sales and other transactions to only between persons holding valid state and federal permits;
- requires the filing of a notice with the Division of Alcoholic Beverages and Tobacco before a person may ship unstamped cigarettes into this state to a person without a valid and current wholesale dealer permit;
- provides for the destruction of all cigarettes seized, confiscated, and forfeited to the state; and
- provides fines and criminal penalties for the possession, removal, deposit, or concealment of counterfeit cigarettes.

The Revenue Estimating Conference has not met to assess the revenue implications of this legislation; therefore, the economic impact of this legislation on state revenue collections is indeterminate at this time. The Department of Business and Professional Regulation estimates the need for four additional FTE's at an estimated \$245,000 annually and a one-time \$250,000 to contract the development of a computer system to capture the new data.

The bill provides that the act will take effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1459a.br.doc
DATE: March 30, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

Reduce government?

The bill imposes expanded reporting requirements on manufacturers, importers and wholesalers bringing cigarettes into and out of the state. The data reported under these expanded requirements would have to be captured and maintained by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation [department]. According to the department, it will need to contract for the development and establishment of a computer system to capture the data, fund license agreements and maintenance for the system, and would need an additional position to provide technology support. In addition, the Bureau of Auditing in the Division of Alcoholic Beverages and Tobacco will need additional personnel to perform the required audit functions.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Alcoholic Beverages and Tobacco [division] in the Department of Business and Professional Regulation oversees the regulation of cigarettes and other tobacco products and the collection of excise taxes. Specifically, Part I of chapter 210, Florida Statutes, concerns the taxation and regulation of cigarettes, Part II of chapter 210, Florida Statutes, concerns the taxation and regulation of other tobacco products, e.g., chew, snuff, etc., and chapter 569 concerns the retail sale of all types of tobacco. Section 210.15, F.S., requires every person, firm or corporation desiring to deal in cigarettes in Florida as a distributing agent, wholesale dealer, or exporter to apply for a cigarette permit. Similarly s. 569.003, F.S., requires every person, firm or corporation desiring to sell cigarettes or other tobacco products at retail obtain a retail tobacco products dealer permit.

A “distributing agent” is any person, firm, or corporation who receives cigarettes in interstate or intrastate commerce and distributes them to wholesalers or other distributing agents inside or outside the state. An “agent” or “stamping agent” is any person authorized by the division to purchase and affix adhesive or meter stamps under Part I of ch. 210, F.S. A “wholesale dealer” sells cigarettes to retail dealers or to other wholesalers. A wholesale dealer may be either a “stamping agent” or non-stamping “tax-paid” wholesaler who receives cigarettes from agents with the tax stamps already affixed. A person who operates cigarette vending machines in more than one place of business is also considered a wholesale dealer. An “exporter” is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders. There is no definition for “importer” or “manufacturer” in Part I of chapter 210.

Section 210.06, F.S., requires that the Florida excise tax stamp be applied before the cigarettes can be offered for sale in this state. Stamps representing various denominations of tax are purchased in bulk by wholesale dealers [located within and outside of this state] and are affixed to packages as proof of

payment.¹ Sections 210.02 and 210.04, F.S., provide that excise taxes must be paid upon the first sale or transaction within this state whether or not such sale or transfer is to the ultimate purchaser or consumer. Current law is unclear whether cigarette manufactures are considered wholesale dealers for purposes of paying the excise tax. For FY 2002-03, the division collected over \$418 million in state excise tax revenue. Cigarettes that are not properly stamped may not be sold in Florida.

Section 210.185, F.S., regulates the importation of cigarettes into this state. This provision makes unlawful the importation of "gray market" or diverted tobacco products, in which sellers or other third parties obtain cigarettes for domestic sale at reduced prices via the international market, by prohibiting the acquiring, holding, owning, possessing, or transporting or importation, for sale or distribution in this state of cigarettes that the manufacturer did not intend to sell or distribute in the United States.

Wholesale dealers are required to submit to the division by the 10th day of each month a monthly report of its purchases and sales of cigarettes within or without the state for the preceding month. Out-of-state cigarette sales are reported on a wholesale dealer's monthly report as exempt from the excise tax because the tax applies only to sales in Florida. The monthly report details the number of cigarette packages stamped, but does not report the stamped packages by manufacturer, by brand family or brand style, e.g., Brand X, Brand X Menthols, Brand X Menthol 100s.

Federal Regulation

The Bureau of Alcohol, Tobacco and Firearms [ATF] in the U. S. Department of the Treasury enforces Chapter 52 of Title 26 of the United States Code and Chapter 114 of Title 18 of the United States Code. Chapter 52 of Title 26, U.S.C., deals mainly with the permits required for the manufacture, importation and other operations involving tobacco products, including federal excise taxes. Chapter 114 of Title 18, U.S.C., deals with trafficking in contraband cigarettes.

Tobacco Settlement Agreement

In February 1995, the State of Florida sued a number of tobacco manufacturers asserting various claims for monetary and injunctive relief on behalf of the State of Florida. In March 1996, Florida's Attorney General settled all of its claims against the Liggett Tobacco Company. Thereafter, in August 1997, the "Big Four" tobacco companies [Phillip Morris, R.J. Reynolds, Brown and Williamson, and Lorillard] entered into a landmark settlement with the State for all past, present, and future claims by the State including reimbursement of Medicaid expenses, fraud, RICO and punitive damages.²

Under the terms of the Florida settlement agreement, as subsequently amended by a Stipulation Amendment, there are non-monetary and monetary sanctions imposed on the tobacco manufacturers. The non-monetary provisions involve restrictions or limitations on billboard and transit advertisements, merchandise promotions, product placement, and lobbying, relating to all tobacco products. These provisions apply only to the five manufacturers that are a party to Florida's settlement agreements [Liggett, Phillip Morris, R.J. Reynolds, Brown & Williamson and Lorillard].

The amount of the tobacco settlement payments is based on a consideration of volume of U. S. cigarette sales, share of market, net operating profits, consumer price indices, and other factors as to each year payment is made. Any adjustment to those payments is based on a formula set forth in an appendix to the settlement agreement and involves a ratio of volume of U. S. cigarette sales as existed in 1997 and volume of sales in the applicable year. If the market share of these manufacturers' declines, their payments to Florida under the settlement agreement will, likewise, decline.

Subsequent to Florida's settlement, the major tobacco companies, Phillip Morris, R. J. Reynolds, Brown and Williamson, and Lorillard and some other smaller tobacco producers settled with the remaining 46

¹ The excise tax on a standard pack of 20 cigarettes is 33.9 cents.

² See *State v. American Tobacco Co., et al.*, Case 95-1466AH (Fla. 15th Cir. Ct. 1996).

states and five U. S. territories [November 23, 1998]. This multi-state Master Settlement Agreement [MSA] provided over \$200 billion to the participating states over a 25-year period and contained terms similar to those of the Florida agreement which tie their payments, in part, to the company's market share sales. The MSA contains provisions allowing subsequent participating manufacturers [SPMs] that were not a party to the original agreement to join the MSA.³ Additionally, each state participating in the MSA was required to enact model legislation⁴ that addressed the potential competitive advantage that tobacco companies that were not parties [nonparticipating manufacturers or NPMs] to the settlement might experience. Under this model legislation, NPMs operating in a state must pay funds into an escrow account equivalent to the amount the manufacturer would have paid to the state if it became a participating manufacturer under the MSA. NPMs are prohibited from shipping their cigarettes into a MSA state without having first established an escrow account.

Because Florida is not an MSA state, manufacturers that were not a party to the original Florida settlement agreement can sell cigarettes in Florida without making either MSA-type payments or escrow payments required by the MSA. Neither are these manufacturers subject to the sales, advertising and marketing restrictions of the MSA or Florida's settlement agreement. Some tobacco companies believe that there has been an increase in the interstate transportation of cigarettes by non-participating manufacturers from the four states that are not parties to the MSA [Florida, Minnesota, Mississippi and Texas] into states that are parties to the MSA, in order to avoid making the required escrow payments.

According to the NAAG approximately fifteen states have enacted additional MSA complementary legislation.⁵ The complementary legislation contains requirements that the state maintain a directory of cigarette products by brand family that are permitted to be sold in that state and prohibit the placement of tax stamps on products that are not listed in a required directory.

Counterfeit, Contraband and Gray Market Cigarettes

According to the ATF spokesman, as quoted in a 2003 Government Accounting report, illegal cigarettes were the number one seized product in the United States in 2002 with theft, hijackings and counterfeiting of cigarettes and tax stamps on the rise.⁶ The same report also indicates that international terrorist groups have engaged in the trafficking of contraband cigarettes and counterfeit tax stamps as a means of fund-raising to support their activities.⁷ A recent Morgan Stanley report estimates that counterfeit cigarettes account for an approximate 2% and growing market share volume in the United States.⁸

Internet and mail-order sales of consumer goods, including tobacco products, are the fastest-growing businesses in the United States.⁹ The Internet is one of the sales outlets of choice for non-MSA compliant brands, counterfeit volume, stolen cargo and stolen retail volume, as well as gray market products. Federal law¹⁰ requires any person who sells and ships tobacco products into a state to a consumer, other than a licensed distributor, to report the sale to the buyer's regulatory agency; however, according to many industry reports, this statute is not aggressively enforced. According to an industry publication, there has also been an increase in the trans-shipment of cigarettes into Florida

³ According to one NAAG document dated January 21, 2004 there are 48 manufacturers participating in the MSA.

⁴ Model Statute, Exhibit T, Master Settlement Agreement

⁵ *Model Complementary Legislation Introduction and Analysis*, NAAG, January 2003

⁶ *Terrorist Financing: U.S. Agencies Should Systematically Access Terrorists' Use of Alternative Financing Mechanisms*, GAO Report 04-163, November 2003.

⁷ *ibid @ 6*

⁸ *State of the US Cigarette Industry: Not a Pretty Picture*, MorganStanley, Tobacco – December 13, 2002

⁹ *Rise of the Rebels*, Tobacco Reporter, September 2003

¹⁰ Jenkins Act, 15 U.S.C., s. 375-378, provides that any person who advertises cigarettes for sale or who ships cigarettes into a state to any person other than a licensed cigarette distributor must file a statement with the appropriate state agency that lists the seller's name, trade name, and address of all business locations as well as the name and address of the person to whom the shipments were made, the brand and quantity of cigarettes shipped. A violation of the Act is a federal misdemeanor and may result in the imposition of a fine up to \$1,000 or imprisoned for a period of up to six months, or both.

[and the other non-MSA states] and back out into an MSA state as a means of avoiding that state's required payments.¹¹

Section 210.185, F.S., regulates the importation of cigarettes into this state. This provision makes unlawful the importation of gray market or diverted tobacco products, in which sellers or other third parties obtain cigarettes for domestic sale at reduced prices via the international market, by prohibiting the acquiring, holding, owning, possessing, or transporting or importation, for sale or distribution in this state of cigarettes that the manufacturer did not intend to sell or distribute in the United States.

Because under both Florida's settlement agreement and the MSA the settling manufacturers' payments under the agreements are based, in part, on market share, the amounts received under the tobacco settlements may be adversely affected by diversionary marketing practices that can supplant domestic tobacco product sales or divert market share to nonsettling tobacco product manufacturers. A reduction in market share has been observed in the 46 states that are a party to the MSA.¹²

Summary of Legislation

This bill makes numerous changes to Part I of chapter 210, Florida Statutes, pertaining to cigarette permitting, stamping, and reporting requirements and sales into and out of Florida. The three primary changes involve the institution of a three-tiered distribution system, the institution of additional reporting requirements, and increased penalty provisions.

The three-tiered distribution system provides that a manufacturer, importer, or distributing agent may sell and distribute cigarettes only to wholesale dealers and wholesale dealers may only sell and distribute cigarettes to retail dealers or other wholesale dealers.

Importers are defined as one who, directly or indirectly, imports finished cigarettes into the state and are required to hold a valid federal permit [26 U.S.C. s. 5712]. Similarly, a "manufacturer" is defined as a person with a valid federal permit issued pursuant to 26 U.S.C. 5712 who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

This legislation expands the definition of "wholesale dealer" to clarify that the term includes persons located outside of the state who sell cigarettes to retail dealers or other persons for purposes of resale in Florida. The expanded definition provides that the term does not apply to manufacturers, export warehouse proprietors or importers who are properly licensed under federal law [26 U.S.C. s. 5712] if that manufacturer, export warehouse proprietor or importer sells or distributes cigarettes in Florida only to wholesale dealers who are properly licensed stamping agents or to export warehouse proprietors or other manufacturers. This definition attempts to clarify that manufacturers, export warehouse proprietors or importers are not wholesale dealers responsible for affixing tax stamps to cigarette packages.

A "retail dealer" is defined as a person, other than a wholesale dealer, located inside or outside this state who sells cigarettes, including retail dealers licensed pursuant to s. 569.003.

The bill contains new or revised reporting requirements. Current law does not require a Florida wholesale dealer to affix stamp on cigarettes shipped into and offered for sale in another state. This bill provides that a person may not transport cigarettes from this state for sale in another state without first affixing the tax stamp or paying any other tax required by that state. Further, a person may not affix the

¹¹ MorganStanley, *State of the US Cigarette Industry: Not a Pretty Picture*, December 2002.

¹² According to the U.S. General Accounting Office, adjustments of settlement payments based, in part, on market share led to a \$1.6 billion reduction in the payments from projections between 1999 and 2001. See U.S. General Accounting Office, *Tobacco Settlement: States' Use of Master Settlement Agreement Payment 8* (GAO-01-851, June 2001.) See also *Issues Affecting MSA Payment, Issue Brief Summary* from the National Conference of State Legislatures, dated October 1, 2003.

cigarette tax stamp or pay any other tax on cigarettes or ship cigarettes into a state in violation of that state's laws. A newly created s.210.05(6)(c) creates exemptions from these reporting requirements for manufacturers and importers that are participating manufacturers with regard to the Master Settlement Agreement or that are in full compliance with an applicable qualifying statute. However, any person that ships cigarettes into another state from Florida is required to file monthly reports which identify the quantity and brand family of cigarettes transported and the name and address of the recipient. To ensure compliance with these prohibitions, such person is also required to certify, under oath and subject to the penalties of perjury:¹³ 1) that the stamps were affixed in accordance with law or if no stamps were affixed that such action was also in accordance with law as established in this legislation; or 2) the person is either a participating manufacturer under the Master Settlement Agreement or is in full compliance with an applicable qualifying statute as defined in the Master Settlement Agreement. These provisions will most likely require manufacturers who ship cigarettes into any of the 46 signatory states to become "participating manufacturers" in the MSA or nonparticipating manufacturers making the required escrow payments in the states into which they ship cigarettes.

Any person who ships unstamped cigarettes into Florida to anyone other than a dealer is required to notify the division prior to shipment.

Dealers located inside Florida are required to apply the tax stamp within 10 days of receipt of the cigarettes. Only wholesale dealers receiving unstamped cigarettes directly from a manufacturer or importer may hold or possess unstamped cigarettes. Unstamped inventory is required to be kept separate from stamped inventory and unstamped cigarettes may not be transferred between wholesalers or between facilities of the same wholesaler.

Increased enforcement and penalties are provided in this legislation to deal with counterfeit and contraband products and any other violation of the act. Under current law, the Division of Alcoholic Beverages and Tobacco is authorized to seize, confiscate, and forfeit for the use and benefit of the state, any cigarettes for which the state's cigarette excise taxes are unpaid (s. 210.12(1), F.S.). The bill extends the division's authority to seize, confiscate, and forfeit cigarettes to any cigarettes that are held in violation of the state's cigarette tax law. The bill requires that all fixtures, equipment, and other materials and personal property on the premises of a wholesale dealer or retail dealer be forfeited to the state, if the wholesale dealer or retail dealer:

- Fails to keep or make a required record, return, report, or inventory, with intent to defraud the state;
- Keeps or makes a false or fraudulent record, return, report, or inventory; or
- Attempts to evade or defeat the requirements of the state's cigarette tax law.

The bill prohibits the state from using or benefiting from the seizure, confiscation, and forfeiture of cigarettes and requires the state to destroy these cigarettes.

The bill also permits the Division of Alcoholic Beverages and Tobacco or its authorized agent, or a law enforcement officer, to stop a vehicle and inspect the vehicle for contraband cigarettes, if the official has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of the state's cigarette tax law.

Under current law, a wholesale dealer or retail dealer who violates the cigarette tax law commits a misdemeanor of the first degree, punishable by up to 1 year in prison or up to a \$1,000 fine (s. 210.18(2), F.S.). A subsequent conviction is a felony of the third degree, punishable by up to 5 years in prison or up to a \$5,000 fine, and is subject to the habitual felony offender statute. The

¹³ Chapter 837, F.S., provides various criminal penalties for perjury. These penalties vary based upon the specific offense of perjury. For example, perjury that is not in an official proceeding is a misdemeanor of the first degree, punishable by up to 1 year in jail or up to a \$1,000 fine. However, perjury in an official proceeding is a felony of the third degree punishable by up to 5 years in prison or up to a \$5,000 fine. It is unclear whether the certification under oath required in this legislation will constitute a misdemeanor or felony perjury.

bill extends these criminal penalties to all persons.

Under current law, a person, firm, or corporation, other than a licensee under the cigarette tax law, who possesses 50 or fewer cartons of unstamped cigarettes commits a misdemeanor of the second degree, punishable by up to 60 days in jail or up to a \$500 fine, but may pay the unpaid tax plus a penalty to avoid criminal penalties (s. 210.18(6), F.S.). The bill deletes this offense but specifies that a person who fails to comply with any requirement of the cigarette tax law, with the intent to defraud the state, commits a felony of the third degree, punishable by up to 5 years in prison or up to a \$5,000 fine, and is subject to the habitual felony offender statute.

The bill provides that, notwithstanding any other law, a person, manufacturer, importer, distributing agent, wholesale dealer, or retail dealer who sells or possesses “counterfeit cigarettes” is subject to the following criminal penalties:

- For a first violation involving less than two cartons of cigarettes, punishable by up to 5 years in prison, up to a \$1,000 fine or five times the retail value of the cigarettes, whichever is greater, or both.
- For a subsequent violation involving less than two cartons of cigarettes, punishable by up to 5 years in prison, up to a \$5,000 fine or five times the retail value of the cigarettes, whichever is greater, or both (violation results in revocation by the Division of Alcoholic Beverages and Tobacco of the manufacturer’s, importer’s, distributing agent’s, wholesale dealer’s, or retail dealer’s permit).
- For a first violation involving two or more cartons of cigarettes, punishable by up to 5 years in prison, up to a \$2,000 fine or five times the retail value of the cigarettes, whichever is greater, or both.
- For a subsequent violation involving two or more cartons of cigarettes, punishable by up to 5 years in prison, a \$50,000 fine or five times the retail value of the cigarettes, whichever is greater, or both (violation results in revocation by the Division of Alcoholic Beverages and Tobacco of the manufacturer’s, importer’s, distributing agent’s, wholesale dealer’s, or retail dealer’s permit).

The bill requires the Division of Alcoholic Beverages and Tobacco, or a law enforcement agency, to seize counterfeit cigarettes and related machinery. The bill also requires the division to destroy the seized counterfeit cigarettes.

The bill imposes civil penalties, in addition to other penalties provided in the cigarette tax law, against a person who knowingly omits, neglects, or refuses to comply with any duty imposed by the cigarette tax law, or to do or cause to be done anything required by the cigarette tax law; or does anything prohibited by the cigarette tax law. The bill specifies that the person violating these provisions is liable for a \$1,000 fine or five times the retail value of the cigarettes, whichever is greater.

Finally, the bill also imposes civil penalties, in addition to other penalties provided in the cigarette tax law, against a person who fails to pay any taxes imposed by the cigarette tax law at the time prescribed by law or rules and further specifies that the person is liable for a penalty of five times the unpaid tax due.

C. SECTION DIRECTORY:

Section 1. Amends s. 210.01, F.S., to amend the definition for “wholesale dealer” and create definitions for “retail dealer,” “stamps,” “importer,” “manufacturer,” “counterfeit cigarettes,” and “brand family.”

Under current law, a “wholesale dealer” is a person who sells cigarettes to retail dealers or other persons for purposes of resale only, or a person who operates more than one vending machine. This legislation expands the definition of “wholesale dealer” to clarify that it includes persons located inside and outside the state who sell cigarettes to retail dealers or other persons for purposes of resale in Florida. The expanded definition provides that the term does not apply to manufacturers, export warehouse proprietors, or importers who are properly licensed under federal law [26 U.S.C. s. 5712] and sells or distributes cigarettes in Florida only to wholesale dealers who are properly licensed stamping agents, export warehouse proprietors, or other manufacturers. This definition will preclude the necessity for manufacturers, export warehouse proprietors or importers to obtain wholesale dealer permits in addition to their other permits.

A “retail dealer” is defined as a person, other than a wholesale dealer, located inside or outside this state who sells cigarettes, including retail dealers licensed pursuant to s. 569.003.

This section creates a definition for “stamps” which has heretofore been undefined.

A definition for “importer” is created which requires any person that directly or indirectly imports finished cigarettes into the state to hold a valid federal permit [26 U.S.C. s. 5712]. Similarly, a “manufacturer” is defined as a person with a valid federal permit issued pursuant to 26 U.S.C. 5712 who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

“Counterfeit cigarettes” is defined by this section to mean cigarettes that have false labels, without tax stamps or with counterfeit tax stamps, or any combination thereof.

“Brand family” is defined as all cigarettes sold under the same trademark and differentiated from one another by additional modifies or descriptors, e.g., menthol, lights, 100’s etc. and includes other symbols, mottos, etc. that are identifiable with a previously known brand of cigarettes.

Section 2. Creates a new subsection (6) in s. 210.05, F.S., and prohibits the transportation of cigarettes into another state without affixing the tax stamp required by that state or otherwise paying any required tax. This section also prohibits a person from affixing the tax stamp or paying the required tax if the other state prohibits the sale of that product. A newly created s.210.05(6)(c) creates exemptions from these reporting requirements for manufacturers and importers that are participating manufacturers with regard to the Master Settlement Agreement or that are in full compliance with an applicable qualifying statute. However, any person that ships cigarettes into another state from Florida is required to file monthly reports which identify the quantity and brand family of cigarettes transported and the name and address of the recipient.

Such person is also required to certify, under oath and subject to the penalties of perjury: 1) that the stamps were affixed in accordance with law or if no stamps were affixed that such action was also in accordance with law as established in this legislation; or 2) the person is either a participating manufacturer under the Master Settlement Agreement or is in full compliance with an applicable qualifying statute as defined in the Master Settlement Agreement. Any person who ships unstamped cigarettes into the state to anyone other than a dealer is required to notify the division prior to shipment.

The section clarifies that the term “person” as used in this section does not apply to common or contract carriers or public warehouses that are not owned by that person and prohibits the possession or transportation of cigarettes by any person not authorized by this legislation.

Section 3. Amends subsection (1) of s. 210.06, F.S., and creates a new subsection (5). Amended subsection (1) requires dealers located within the state to apply the tax stamp within 10 days of receipt of the cigarettes and dealers outside the state are required to affix the tax stamp before cigarettes are shipped into Florida.

A tax stamp is required to be applied to all cigarettes intended for sale or distribution to consumers. However, no tax stamp is required to be applied to cigarettes exempt from tax under federal law that are distributed by a manufacturer in accordance with federal regulations. Dealers may only stamp cigarettes that are received from a manufacturer or importer who possesses a valid Federal permit.

Subsection (5) provides that only dealers receiving unstamped cigarettes directly from a manufacturer or importer may hold or possess unstamped cigarettes; unstamped inventory is required to be kept separate from stamped inventory and unstamped cigarettes are prohibited from being transferred between dealers or between facilities of the same dealer.

Section 4. Creates a new s. 210.085, F.S., to prescribe a structured distribution system. A manufacturer, importer, or distributing agent may sell and distribute cigarettes only to wholesale dealers and dealers may only sell and distribute cigarettes to retail dealers or other wholesale dealers.

Section 5. Amends subsection (1) of s. 210.09, F.S. Amended subsection (1) requires any person who ships unstamped cigarettes into the state to anyone other than a dealer to notify the division prior to shipment. This requirement does not apply to common or contract carriers transporting cigarettes through the state to a location outside of the state under a proper bill of lading. This subsection also grants specific authority for the division or any law enforcement officer to stop and inspect vehicles if they have reasonable grounds to believe they will find contraband cigarettes.

Section 6. Amends subsection (1) of s. 210.12, F.S., and creates a new subsection (2) and a new subsection (3). This section broadens the division's authority to seize, confiscate and destroy cigarettes, fixtures, equipment and other materials and personal property. Rather than being sold at auction, cigarettes seized, confiscated, and forfeited to the state under this part are required to be destroyed.

Section 7. Amends subsection (1) of s. 210.15, F.S., to require permits to be obtained by every person desiring to operate as a manufacturer, importer, exporter, distributing agency, or wholesale dealer for each place of business in Florida wherever it is located. If there is no place of business in Florida, a permit must be obtained for the location at which the principal place of business is located. Manufacturers and importers are not required to obtain a permit under present law.

This section adds new restrictions on the issuance and retention of permits by prohibiting the issuance, maintenance or renewal of a permit of any person owning more than a 10 percent interest in a business if the person:

- o owes more than \$500 in delinquent taxes to the division;
- o has had a permit revoked during the previous two years; or
- o has been convicted of selling stolen or counterfeit cigarettes, receiving stolen cigarettes, or being involved in the counterfeiting of cigarettes.

Finally, this section makes several conforming changes.

Section 8. Amends subsections (2), (3), and (6) of s. 210.18, F.S., and creates a new subsection (9). Subsections (2) and (3) make conforming changes, subsection (6) deletes the existing misdemeanor penalty provisions for possession of less than 50 cartons of contraband cigarettes and subsection (9) establishes a tiered penalty structure for possession of counterfeit cigarettes. Counterfeit cigarettes seized by the division must be destroyed. Specifically, this section provides the following penalties for possession of less than two counterfeit cartons of cigarettes or the equivalent amount of other cigarettes:

- o a fine of not to exceed \$1,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both; and

- o a subsequent violation results in revocation of the permit and a fine not to exceed \$5,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both.

The following penalties for possession of two or more counterfeit cartons of cigarettes or the equivalent amount of other cigarettes:

- o a fine of not to exceed \$2,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both; and
- o a subsequent violation results in revocation of the permit and a fine not to exceed \$50,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both.

Section 9. Creates a new s. 210.181, F.S., to provide for a civil penalty in addition to other penalties provided in Part I of chapter 210. Specifically, this section authorizes a fine of \$1,000 or five times the retail value of the cigarettes, whichever is greater, and a fine equal to five times any unpaid tax due for non-payment of taxes.

Section 10. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not met to assess the revenue implications of this legislation; therefore, the economic impact of this legislation on state revenue collections is indeterminate at this time. However, to the extent counterfeit and contraband cigarette sales are prohibited and additional permit fees are collected, revenue collections to the Cigarette Excise Tax Collection Trust Fund will increase. In addition, revenue received pursuant to Florida's settlement agreement with tobacco companies and the multi-state Master Settlement Agreement between 46 other states and tobacco companies may be positively impacted if the bill curtails or prohibits diversionary marketing practices that supplant domestic tobacco product sales or divert market share to nonsettling tobacco manufacturers.

2. Expenditures:

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Effects	FY 02-03	FY 03-04	FY 04-05
Operating Capital Outlay	6,000	None	None
Other Personal Services	250,000	None	None
Other (Expense)	12,244	None	None
Subtotal	268,244	None	None

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	FY 02-03	FY 03-04	FY 04-05
Salaries/Benefits # of FTE's			
1 Regulatory Spec. II	35,438	36,324	37,232
1 Revenue Specialist II	36,301	37,208	38,138
1 Tax Auditor I	39,371	40,158	40,961
1 System Project Analyst	46,634	47,800	48,995

a. <i>Expenses</i>	57,416	57,416	57,416
Other Personal Services	0	0	0
b. <i>Subtotal</i>	215,160	218,906	222,742

NOTE: The Division of Alcoholic Beverages and Tobacco would require 1 additional Regulatory Specialist II position in the Bureau of Licensing, and 1 additional Revenue Specialist II position and 1 Tax Auditor I position in the Bureau of Auditing, to administer this bill, along with space and equipment applicable to the positions. The Division of Information Technology would require 1 Systems Project Analyst, \$250,000 one-time programming costs and \$30,000 in recurring Expense above state standards for system maintenance and licensing costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent provisions of this legislation limit the sale of counterfeit and contraband cigarettes in the state, cigarette manufacturers' whose products are subject to those abuses will benefit.

The provisions of this legislation institute new reporting requirements for cigarettes and other regulatory measures. These new provisions may impose additional costs to various segments of the industry.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

No rule making authority is granted in HB 1459 w/CS. Rule making authority regarding the reporting requirements was granted to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation in the bill as originally filed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 4 of the bill which creates a new s. 210.085, F.S., contains provisions that prohibit a manufacturer, importer, distributing agent or wholesale dealer from selling or distributing cigarettes to persons on "tribal lands" located within the borders of this state who are not licensed by the Division of Alcoholic Beverages and Tobacco. Since Indian nations are sovereign, the Legislature may wish to consider deleting this prohibition.

Also, the bill also amends criminal penalties under the cigarette tax law in s. 210.18, F.S. Both s. 772.102, F.S., and s. 895.02, F.S., contain specific references to s. 210.18, F.S., for purposes of defining "criminal activity" and "racketeering activity," respectively. The Legislature may wish to reenact those specific references to ensure the changes made in s.210.18 are included within those definitions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 25, 2004, the Committee on Business and Professional Regulation adopted a strike-all amendment to this bill and voted to report the bill favorably with committee substitute. The committee substitute removed a significant amount of the new reporting requirements established in the bill as originally filed. Major amendments include:

- the extensive reporting requirements established in s.210.09(2)(b) were deleted;
- a new s.210.05(6)(c) providing exemptions for participating manufacturers and manufacturers in compliance with an applicable qualifying statute in another state was created; and
- a new provision requiring certification under oath of compliance with the tax stamping provisions was created.